

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

JOHNICA LYNN PRYOR,

Petitioner,

v.

DIRECTOR, TDCJ-CID,

Respondent.

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Case No. 6:19-CV-578-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner Johnica Lynn Pryor, an inmate proceeding *pro se*, filed the above-captioned and numbered petition for writ of habeas corpus. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On January 16, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 8), recommending that the petition be dismissed as a successive petition. *Id.* at 2–4. Petitioner filed objections on March 4, 2020. Docket No. 10.

The Court overrules Petitioner’s objections. Petitioner argues that the Court should not adopt the Magistrate Judge’s recommendation regarding his actual innocence claim and that the Court should “personally consider the entire record ‘de novo’ to determine whether constitutional violations exist[] before ruling on any issues.” *Id.* at 5. Petitioner also argues that the Court should not make any ruling “in reference to ground five which was not mentioned in the Report.” *Id.* Petitioner, however, does not dispute the Magistrate Judge’s proper conclusion that the Court does not have jurisdiction here until he obtains leave from the Fifth Circuit to file a successive petition.

See, e.g., United States v. Key, 205 F.3d 773, 774 (5th Cir. 2000). The Court therefore overrules Petitioner's objections.


Having made a *de novo* review of the objections raised by Petitioner to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Petitioner's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 8) be **ADOPTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITH PREJUDICE** as successive, until such time as Petitioner obtains permission from the Fifth Circuit Court of Appeals to file a successive petition. It is further

ORDERED that Petitioner is **DENIED** a certificate of appealability *sua sponte*. The denial of the certificate of appealability refers only to an appeal of this case and shall have no effect upon Petitioner's right to seek leave to file a successive petition or to pursue such a petition in the event that permission is granted.

So **ORDERED** and **SIGNED** this **8th** day of **April, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE